IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.125 of 1999

In the matter of Colour Cartons Limited

Balkrishna Industries Ltd.....Petitioner

Mr. Shiralkar i/b. Shiralkar & Co., for the petitioner
None for the Respondents

CORAM: A.M. KHANWILKAR, J.
DATE : 4th August, 2005

P.C.:

1. Heard learned Counsel for the Petitioners. None appears for the Respondents though served. No reply has been filed opposing this Petition.

2. According to the petitioners they have supplied goods to the respondent company as per its requisitions. The goods are duly delivered and received by the Respondent company. The respondent company has also acknowledged its liability to pay a sum of Rs.16,21,815/- which was the balance to the credit of the petitioners as on 15th October, 1998. This acknowledgement is reflected in the communication dated November 10, 1998 sent by the respondent company under the signature of V.P. Kulkarni, Accountant. Inspite of repeated reminders, the respondent company failed to pay the outstanding amount. Eventually the petitioners gave statutory notice on 4th December, 1998. Inspite of statutory notice no payment was offered by the respondent company which forced the petitioners to file the present petition under Sections 433 and 434 of the Companies Act on 5th February, 1999. This petition was eventually admitted on 18th October, 1999. Admission of the petition has been duly advertised and published. Inspite of notice as mentioned earlier no reply has been filed on behalf of the Respondents. In that sense

the averments made in the petition have remained uncontroverted. In any case the liability to pay the amount in question is acknowledged by the respondent company. The respondent company has also expressed inability to pay the amount due to financial problem. Besides, during the pendency of this petition the Respondent company in the reply affidavit opposing another Company Application No.295 of 1999 has admitted its liability to pay the outstanding dues to the extent of Rs.4.5 crores. In that background this Court by order dated 24th June, 1999 directed appointment of provisional Liquidator. The Court is informed that the Provisional Liquidator has already disposed of the assets and properties of the Respondent Company.

. Be that as it may, as the assertions made in the petition have remained uncontroverted coupled with the fact that the outstanding payment has not been offered to the petitioners inspite of statutory notice, legal presumption arising against the respondent company has remained unrebutted. Viewed in this petrspective, this Court has no option but to allow the petition in terms of prayer clauses (a) and (b). Ordered accordingly.

3. Official Liquidator to proceed in accordance with law in case these are assets and properties available for disposal.

(A.M. KHANWILKAR, J.)